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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE Plaintiff and Respondent, v. COREY RENARD FIELDS Defendant and Appellant.	B261039 (Los Angeles County Super. Ct. No. BA402392)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dennis J. Landin, Judge. Affirmed.

Susan K. Shaler, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Corey Fields appeals his conviction of first-degree murder (Pen. Code, § 187, subd. (a)) and possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)).[1] An enhancement that, in the course of the murder, defendant personally and intentionally discharged a firearm causing death was also found true (§ 12022.53, subd. (d)). We reject all of defendant's challenges to his conviction and sentence and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*

On September 8, 2012, around 3:00 in the afternoon, 50-year-old Donald Wiley was shot to death in his car. The car was parked on 76th Street, near a credit restoration business Wiley owned.

76th Street runs East-West. Crenshaw Boulevard was to the West; 10th Avenue to the East. Wiley's car was parked on the South side of the street, facing East (and, therefore, 10th Avenue). It was approximately 90 feet from the intersection with Crenshaw. Wiley's business was across the street from where he had parked.

Nobody actually saw the shooting, but several people heard it, most notably Ryan Watson, who was sitting in his truck, parked 280 feet in front of Wiley's car. Watson had been sitting in his truck for nearly an hour, trying to diagnose a "check engine" light. He heard approximately eight gunshots, and looked around to see where they were coming from. He saw nobody nearby – no pedestrians or cars driving past on 76th Street. The only thing that caught his eye was Wiley's car, behind him; the driver's side door was open. Watching through his truck's side-view mirror, Watson saw defendant back out of the car, as if he had been bending over into the car. Defendant walked, with a slight limp, to his beige-colored Grand Prix, which was parked right behind Wiley's car, and drove off. When defendant drove away, he drove East on 76th, past Watson's truck. As defendant drove past, Watson took down defendant's license plate number.

Watson, who is a paramedic, then went back to Wiley's car. He discovered Wiley dead in the driver's seat, riddled with gunshot wounds. Watson stayed until paramedics

[1] Unless otherwise indicated, all future statutory references are to the Penal Code.

arrived. Police came as well; Watson gave them the license plate number from defendant's car.

It is not seriously disputed that defendant was the person Watson saw back out of Wiley's car. A DMV search on the license plate number Watson took down identified defendant and his father. Watson described defendant's appearance, including his age and distinct gait. He selected defendant's picture from a photographic array as resembling the person he saw. Moreover, records obtained from defendant's cell phone provider demonstrated that, at the time of the shooting, defendant's phone was in the area of the shooting.

While Watson was the best witness for the prosecution, he was not the only one. Lisa Jessie was on the second floor of her house, on 76th, when she heard the shots. When the gunshots stopped, she looked out the window and saw defendant's beige Grand Prix being driven East on 76th. She gave a generic description of the car's driver; it matched defendant. She saw no passengers in the car. She saw no other cars go by.

Next, there was a 911 call from a woman named Jennifer Stinson; the prosecutor played a tape of her call for the jury. Stinson said, "I seen it." At times, Stinson used the word "they" to describe the shooter or shooters (e.g., "They shot him in the – in the head"); it was not clear whether she was saying there were multiple shooters or simply speaking colloquially. At one point, the 911 operator asked Stinson the race of the people she saw; Stinson replied, "The victim or the – or the suspect?", phrasing which suggests a single shooter. Stinson, like Watson and Jessie, identified the suspect's car as a beige-colored Grand Prix. However, in the background of Stinson's 911 call, a woman's frantic voice could be heard, saying, "I seen that motherfucking burgundy car." That woman was identified as Rashawn Mason. She did not testify at trial.

There was some evidence that the murder had been planned. Wiley's business was one of three in the same building. The telephone number of one of the other businesses, a realtor's office, was found on the windows on both Crenshaw and 76th. On September 4, four days before the murder, defendant – using the cell tower nearest the businesses – telephoned the realtor's office. He quickly terminated the call two seconds

after dialing, then called again using "*67" to block his number from being identified by the recipient's caller ID. The realtor testified that she did not know defendant. The jury could have reasonably inferred that defendant mistakenly believed the realtor's number was the victim's, and that he was attempting to determine whether the victim was at work without leaving behind a call record.

Wiley was murdered four days later. He was ambushed in the seat of his car. He suffered nine gunshot wounds. The bullets' pathways began from the driver's side of the car and travelled toward the passenger side and downward. There was some stippling, indicating some of the gunshots were made from a distance of less than three feet. All of the shots were fired from the same gun.

In a jail phone call to his girlfriend after his arrest, defendant alluded to a previous statement to his girlfriend: "before this situation happened" he thought he might "go to jail." This suggests that he had planned the murder.

The murder weapon was not recovered until it had been used in another shooting after defendant was in custody. The jury was not informed of this fact. Both the cars of defendant and Wiley were processed for fingerprints and DNA but no evidence of either was introduced.

2. *Procedural History*

Defendant was charged by information with murder and possession of a firearm by a felon. He was alleged to have personally and intentionally discharged a firearm, causing death. One prior serious felony conviction (§ 667, subd. (a)(1)) and three "strikes" under the Three Strikes law (§ 1170.12) were also alleged. Defendant entered a plea of not guilty.

Defendant moved under *People v. Pitchess* (1974) 11 Cal.3d 531 (*Pitchess*) to discover information about the investigating officer; the motion was granted and the court conducted an in camera hearing. The court concluded there was nothing to disclose.

Trial on the prior conviction allegations was bifurcated, although defendant stipulated, at trial, to having a prior felony conviction for the purposes of the firearm possession count.

Ultimately defendant did not affirmatively introduce any evidence at trial. Defense counsel instead attempted to create reasonable doubt from inconsistencies in the prosecution's evidence. Specifically, she relied on Stinson's ambiguous use of "they" in her 911 call, and Mason's reference to a burgundy car in the background of that call.

Over defendant's objection, the jury was instructed on aiding and abetting, based on the very same "they" in Stinson's 911 call. Also over defendant's objection, the jury was instructed on lying in wait as an alternative theory to premeditation for first degree murder.

During deliberations, the jury sought read back of Watson's testimony regarding his ability to see defendant in his truck mirror. It also sought a transcript of Stinson's 911 call. After those requests were granted, the jury found defendant guilty as charged, and in the first degree.

Defendant waived jury on his prior conviction allegations. Prior to the bench trial, defendant made a *Faretta v. California* (1975) 422 U.S. 806, 834-836 (*Faretta*) motion to discharge his appointed counsel and represent himself. The motion was denied as untimely and an attempt to delay proceedings. The bench trial was held on the priors, which were found to be true. However, the court granted a motion to dismiss two of defendant's strike priors, leaving a single strike and the prior serious felony.

At the sentencing hearing, after defense counsel stated there was no legal cause why sentence should not be imposed, relatives of the victim spoke on the issue of sentencing. Defendant's mother made a brief statement on his behalf, and then defendant was offered the opportunity to address the victim's family and the court. Defendant first spoke to the victim's family, apologizing for their loss, but claiming he did not kill the victim. Defendant then addressed the court, proclaiming his innocence. He argued that he had been railroaded. He specifically told the court that he was disappointed in his attorney's performance, as she did not do "a lot of the things" defendant had discussed with her. He itemized several purported deficiencies in counsel's performance. Defendant stated that he did not know if counsel was incompetent, but stated his belief that he was convicted through her negligence. Defendant presented the court with a

handwritten motion for new trial, on the basis of ineffective assistance of counsel, explaining that it was "everything [he] said as far as stuff [his] lawyer didn't do." The court made defendant's written submission part of the record, but told defendant that the court respected the jury's verdict. The court's minute order states, "No action is taken on this motion."

Defendant was sentenced to prison for 80 years to life, calculated as follows: 25 years to life for the first degree murder, doubled for the strike, plus an additional 25 years to life for the firearm enhancement, and 5 years for the prior serious felony. A concurrent term of 4 years (the middle term doubled) was imposed for possession of a firearm by a felon.

Defendant filed a timely notice of appeal.

DISCUSSION

On appeal, defendant: (1) seeks independent review of the trial court's in camera *Pitchess* hearing; (2) contends there was insufficient evidence that defendant committed the murder; (3) argues the court erred in admitting his jail call to his girlfriend over his Evidence Code section 352 objection; (4) contends the court erred in instructing the jury on aiding and abetting and lying in wait; (5) argues that the court should have conducted a *People v. Marsden* (1970) 2 Cal.3d 118, 123 (*Marsden*) hearing in response to the new trial motion; (6) contends that the court erred in denying his new trial motion; and (7) argues that the court violated section 654 by imposing a concurrent sentence for the count of possession of a firearm by a felon.

1. *Pitchess Review*

Defendant requests that we independently review the records from the in camera hearing, to assure that the proper *Pitchess* procedure was followed, in connection with the grant of his *Pitchess* motion. The prosecutor concurs that the request is appropriate. The procedural requirements for a *Pitchess* hearing are set forth in *People v. Mooc* (2001) 26 Cal.4th 1216. "When a trial court concludes a defendant's *Pitchess* motion shows good cause for discovery of relevant evidence contained in a law enforcement officer's personnel files, the custodian of the records is obligated to bring to the trial court all

'potentially relevant' documents to permit the trial court to examine them for itself. [Citation.] . . . A court reporter should be present to document the custodian's statements, as well as any questions the trial court may wish to ask the custodian regarding the completeness of the record. [Citation.] [¶] The trial court should then make a record of what documents it examined before ruling on the *Pitchess* motion. . . . If the documents produced by the custodian are not voluminous, the court can photocopy them and place them in a confidential file. Alternatively, the court can prepare a list of the documents it considered, or simply state for the record what documents it examined." (*Id.* at pp. 1228-1229.)

Here, the trial court complied with the procedural requirements set forth by *Mooc*. The custodian of records testified under oath that there were no responsive documents in the files of the investigating officer. The court questioned the custodian of records as to records requested and reviewed. We have conducted an independent review of the transcript and find no abuse of discretion.

2. *Sufficiency of the Evidence*

Defendant contends the evidence was sufficient to establish that he was present at the scene immediately after Wiley was shot, but not sufficient to establish that he was the actual shooter or aided and abetted in the shooting. We disagree.

Claims challenging the sufficiency of the evidence to uphold a judgment are reviewed under the substantial evidence standard. Under this standard, " ' "an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements of the crime] beyond a reasonable doubt." ' [Citation.]" (*In re George T.* (2004) 33 Cal.4th 620, 630-631.)

Defendant's concession that there was sufficient evidence that he was present immediately following the shooting means that his insufficiency of the evidence argument amounts to a suggestion that although Watson saw defendant backing out of the driver's compartment of Wiley's car immediately after the shooting ceased, the jury could not reasonably infer that defendant committed the shooting. The suggestion is

farfetched. Both Watson and Jessie testified that there was nobody else around. All of the gunshots were fired from the same gun; the stippling demonstrates that the shooter was within three feet of Wiley. Defendant was the only person seen in that position. Even if a burgundy car were somehow involved in the shooting, it does not undermine the fact that defendant alone was spotted in the position where the murderer must have stood, moments after the shooting had stopped. The evidence was not merely sufficient; it was overwhelming.

3. *The Jail Call*

As evidence of premeditation, the prosecution introduced evidence of a phone call defendant made from jail to his girlfriend. In the call, defendant was angry that his girlfriend had not visited or put money on his phone card, despite her promises to do both. He stated, "It's what I'm saying. When I was – when I was – when I was – trying to tell you – when I was trying to tell you before this situation happened, like, if I go to jail this and this and this, you tried to act like you was on point. Like you was going to be on point. 'Oh, I don't want to hear it. I know what I got to do.' This something, it's a major motherfucken excuse." His tirade ended with, "You ain't did nothing that you told me you was going to do, man."

Defendant argued that the evidence was more prejudicial than probative; the trial court overruled the objection and allowed the prosecutor to introduce the call. As to the probative value of the evidence, the court agreed that it demonstrated that defendant thought, in advance, that he might go to jail. In response to defendant's argument that it was not clear that defendant was referring to the shooting rather than some other criminal conduct, the court concluded that this was an argument defense counsel could make as to the weight of the evidence.

On appeal, defendant argues that the evidence was irrelevant and unduly prejudicial. Specifically, he argues that the call "simply portrayed [him] as a committed criminal who knew he would wind up in jail or prison, which encouraged the jury to treat him as such." Further, he argues that the evidence was prejudicial in that it portrayed him as "frustrated, somewhat rude, and whining."

"The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) A trial court's determination under Evidence Code section 352 will not be disturbed on appeal absent a clear showing of abuse of discretion. (*People v. Linkenauger* (1995) 32 Cal.App.4th 1603, 1610.) " 'The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. "[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is 'prejudicial.' The 'prejudice' referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual *and which has very little effect on the issues*. In applying section 352, 'prejudicial' is not synonymous with 'damaging.' " ' " (*People v. Gionis* (1995) 9 Cal.4th 1196, 1214.)

We conclude the court did not abuse its discretion in admitting the phone call. While the evidence was not overwhelmingly probative, it did have some relevance as tending to show defendant had been planning criminal activity, possibly the Wiley murder. This value was not substantially outweighed by prejudice. To the extent defendant argues the evidence was prejudicial in that it demonstrated defendant was a "committed criminal," defendant confuses the probative value of the evidence with prejudice. The evidence was relevant precisely because it demonstrated that, at some time before defendant was jailed for this murder, defendant discussed with his girlfriend the possibility that he would be jailed. To the extent defendant argues that the evidence was prejudicial because it showed him to be frustrated, rude and whining, that is not the sort of prejudice Evidence Code section 352 was intended to address. That defendant may have been frustrated, rude and whining does not tend to evoke an emotional bias against him; there is no basis on which to assume the jury would be so enraged against

defendant for the way he spoke to his girlfriend that it would convict him of first degree murder because of it.

4. *Jury Instructions*

Defendant argues the trial court erred in instructing the jury on (1) aiding and abetting, and (2) lying in wait, because the evidence was insufficient to support both instructions.

Apart from whether there was sufficient evidence to support the instructions, an issue we do not decide, any error was harmless.

Broadly speaking, there are two types of error which could arise from giving instructions not justified in a case. If the instructions given were legally erroneous – that is, when the jury is instructed on a legally invalid theory – reversal is generally required unless there is a basis in the record to conclude that the verdict was actually based on a valid theory. (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129.) However, if the instruction was correct in the law but simply unsupported by the facts, "reversal is not required whenever a valid ground for the verdict remains, absent an affirmative indication in the record that the verdict actually did rest on the inadequate ground." (*Ibid.*) Instructing on a theory unsupported by the facts is error (*id.* at p. 1131), but it is harmless error "unless a review of the entire record affirmatively demonstrates a reasonable probability that the jury in fact found the defendant guilty solely on the unsupported theory." (*Id.* at p. 1130.)

Aiding and Abetting - As to the instruction on aiding and abetting, the record affirmatively demonstrates that the jury did *not* rely on aiding and abetting to find defendant guilty. The jury found true the allegation that defendant personally and intentionally discharged a firearm causing death, and the evidence demonstrated there was only a single shooter. As such, it is apparent that the jury concluded defendant was the direct perpetrator of the crime.

Lying in Wait - While there is no conclusive evidence that the jury found the murder to be first-degree on the basis of premeditation rather than lying in wait, that is not the test. We simply review the entire record to determine whether there is a

reasonable probability that the jury relied on lying in wait. Our review reveals no such probability. The evidence of premeditation was substantially greater than the evidence of lying in wait; the prosecutor did not argue lying in wait to the exclusion of premeditation; and the jury's requests for read back did not focus on either theory. On this largely silent record, we cannot infer a reasonable probability that the jury relied on lying in wait, so any error in giving the instruction was harmless.

5. *New Trial Motion – Marsden*

At his new trial motion, defendant complained of ineffective assistance of counsel. He now argues that the trial court should have conducted a *Marsden*-type hearing to determine whether he should have been appointed substitute counsel to pursue the new trial motion on his behalf.

"The appropriate procedure for the trial court to follow when defendant seeks to file a new trial motion based on ineffective representation of counsel is outlined in *People v. Stewart* (1985) 171 Cal.App.3d 388 []. In that case, appellant filed a motion for new trial alleging incompetence of counsel. Defense counsel claimed he could not argue his own incompetence and argued that the trial court should immediately appoint a new attorney to represent appellant on the motion. After conducting an in camera hearing with appellant and defense counsel from which the district attorney was excluded, the trial court denied the motion for new trial, finding the motion to be unsupported. The appellate court initially noted that the question whether to appoint new counsel to present a motion for new trial is distinct and separate from the issue of whether new trial is warranted. [Citation.] [¶] The appellate court then pointed out that, pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, 123 [], the right to substitution of counsel depends upon whether defendant has made a sufficient showing that the right to assistance of counsel would be substantially impaired if the request is not granted. [Citation.] Although noting that *Marsden* involved the right to new counsel before trial is completed rather than for the purpose of making a posttrial motion [citation], the *Stewart* court relied on *Marsden* in ruling that 'we believe it imperative that, as a preliminary matter, the trial judge elicit from the defendant, in open court or, when appropriate, at an *in-camera* hearing, the

reasons he believes he was inadequately represented at trial. As stated in *Marsden*, a trial court cannot thoughtfully exercise its discretion in a matter such as this without listening to the defendant's reasons for requesting a change of attorneys. . . . [¶] Once a trial judge is informed of the facts underlying a defendant's claim of inadequate assistance, he is then in a position to intelligently determine whether he may at that point fairly rule on the defendant's motion for a new trial, or whether new counsel should be appointed to more fully develop the claim of inadequate representation. [¶] In those instances where the alleged incompetence relates to events occurring at trial . . . it is unnecessary to appoint new counsel to assist in the motion for new trial, since observations necessarily made by the trial court during trial provide sufficient information to intelligently rule on the motion for new trial. . . . [¶] If, on the other hand, the defendant's claim of inadequate representation relates to something that did not occur within "the four corners of the courtroom" [citation] or which cannot fairly be evaluated by what did occur at trial, then, in the sound exercise of its discretion, the court may appoint new counsel to better develop and explain the defendant's assertion of inadequate representation.' [Citation.]" (*People v. Winbush* (1988) 205 Cal.App.3d 987, 989-990.)

The problem with defendant's reliance on this line of authority is that he never sought replacement counsel to pursue the new trial motion. "[A]bsent a request the court appoint substitute counsel to prepare and present a motion for new trial based on inadequate representation, the *Stewart* procedures concerning appointment of such counsel are not required. [Citation.]" (*People v. Gay* (1990) 221 Cal.App.3d 1065, 1071.) *Gay* arose in circumstances virtually identical to this case. After his conviction, Gay filed a motion for new trial, in pro. per., alleging ineffective assistance of counsel. (*Id.* at p. 1066.) "Neither in the written motion nor at the subsequent hearing did defendant Gay or his counsel ask the court to appoint new counsel to prepare or argue the motion for new trial." (*Id.* at p. 1068.) The trial court did not question Gay or his counsel regarding the claims of ineffective assistance, and denied the motion. (*Ibid.*) On appeal, Gay argued the court erred in not conducting a *Marsden* hearing pursuant to *Stewart*. The Court of Appeal disagreed, finding *Stewart* distinguishable because Gay

never sought substitute counsel to prepare or present his new trial motion. (*Id.* at p. 1069.) As he did not seek new counsel, the court was not obligated to conduct a *Marsden* hearing. (*Id.* at p. 1071; see also *People v. Sanchez* (2011) 53 Cal.4th 80, 84 [no duty to conduct a *Marsden* hearing without a clear indication by the defendant, either personally or through counsel, that he wants a substitute attorney].)

Here, defendant did not seek substitute counsel, either in his written motion or at the sentencing hearing. He did not indicate that he could not make the new trial motion without counsel. While he had previously sought to represent himself under *Faretta*, he never sought substitute counsel at any point in these proceedings. As defendant did not seek substitute counsel, the trial court did not err by failing to conduct a *Marsden* hearing.

6. *New Trial Motion – Not Cognizable on Appeal*

Defendant next argues the court erred in denying his new trial motion on the merits. But the trial court did not deny the new trial motion; it declined to address it at all.

Defendant was represented by counsel at sentencing. He did not seek substitute counsel, nor did he seek to reassert his *Faretta* motion to represent himself. A defendant who is represented by an attorney of record will not be personally recognized by the court in the conduct of his case, except with respect to motions regarding representation, such as *Marsden* and *Faretta* motions. (*People v. Clark* (1992) 3 Cal.4th 41, 173.) Defendant did not have the authority to bring a new trial motion in pro. per., and the trial court therefore did not err in refusing to address it.[2]

7. *Concurrent Sentence on Possession of a Firearm by a Felon*

Defendant contends the trial court erred by imposing a concurrent sentence on the possession of a firearm by a felon count, rather than by staying it under section 654.

Section 654, subdivision (a) provides, in pertinent part, "An act or omission that is punishable in different ways by different provisions of law shall be punished under the

[2] Our holding does not preclude defendant from reasserting his claim of ineffective assistance of counsel by means of a petition for habeas corpus, should he wish to do so.

provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Under the statute "[a] course of conduct that constitutes an indivisible transaction violating more than a single statute cannot be subjected to multiple punishment. [Citation.]" (*People v. Martin* (2005) 133 Cal.App.4th 776, 781.) "Whether multiple convictions are part of an indivisible transaction is primarily a question of fact. [Citation.] We review such a finding under the substantial evidence test [citation]; we consider the evidence in the light most favorable to respondent and presume the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" (*Ibid.*) The issue is whether the defendant possessed a single, or multiple, criminal objectives. (*Ibid.*)

"[W]hen an ex-felon commits a crime using a firearm, and arrives at the crime scene already in possession of the firearm, it may reasonably be inferred that the firearm possession is a separate and antecedent offense, carried out with an independent, distinct intent from the primary crime. Therefore, section 654 will not bar punishment for both firearm possession by a felon (§ 12021, subd. (a)(1)) and for the primary crime of which the defendant is convicted." (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1141.) When the evidence shows possession to antecedent and separate from the primary offense, multiple punishment is appropriate. But if there is possession only in conjunction with the primary offense, section 654 prohibits multiple punishment. (*Id*. at p. 1143.) The latter circumstance would arise if, for example, the defendant grabbed the gun during a struggle immediately prior to the shooting. (*Id*. at p. 1144.)

Moreover, even when there is no direct testimony that the defendant possessed the firearm prior to the other crimes, the court may infer such prior possession from the circumstances, when there is no evidence showing that fortuitous circumstances placed the firearm in the defendant's hand at the instant of the other offense. (*People v. Ortiz* (2012) 208 Cal.App.4th 1354, 1378-1379.)

In this case, the trial court inferred that defendant arrived at the scene with the firearm, and therefore had possessed it previously. There was no evidence of a struggle or that he had taken the gun from his victim. On the other hand, there was evidence that

the crime was premeditated – defendant had planned to kill Wiley and had waited to catch him unawares. It is impossible that defendant premeditated the murder but did not bring the murder weapon with him. The trial court's implied finding of prior possession, and therefore multiple criminal objectives, was well-supported.

8. *Cumulative Error*

The only conceivable error in this case was the giving of factually-unsupported jury instructions on aiding and abetting and lying in wait. Any such error in giving the instructions was harmless. Thus, defendant's claim of cumulative error fails.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.